

**Facsimile****RECEIVED  
CENTRAL FAX CENTER****NOV 05 2004***Lilly*Eli Lilly and Company  
Lilly Corporate Center  
Indianapolis, Indiana 46285  
U.S.A.**Legal Department - Patent Division****Date: November 5, 2004****To: Examiner James Jason Galvez**  
**Company: USPTO**  
**Fax: 1-703-872-9306**  
**Phone:****From: Thomas Webster**  
**Fax: 317-276-5172**  
**Phone: 317-276-3334**  
**Total Pages: 8****Subject:** Application No.: 10/089,984  
Art Unit: 1647  
Examiner: James Jason Galvez  
Docket No.: X-13199**PRIVILEGED AND CONFIDENTIAL COMMUNICATION****Message:** Please see attached Reply in response to Office Action of August 3, 2004. Thank  
you.

If there are any transmittal problems please call Kim Landers at (317) 277-1469.

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Answers That Matter.

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APPLICATION NO	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO	CONFIRMATION NO
10/089,984	07/01/2002	Thomas Frank Bumol	X-13199	3218
25885	7590	08/03/2004	EXAMINER	
ELI LILLY AND COMPANY PATENT DIVISION P.O. BOX 6288 INDIANAPOLIS, IN 46206-6288			GALVEZ, JAMES JASON	
			ART UNIT	PAPER NUMBER
			1647	

**RECEIVED**

AUG 10 2004

ELI LILLY &amp; COMPANY, PATENT DEPT.

DATE MAILED: 08/03/2004

*Restriction 9.3-2004*

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.		Applicant(s)	
	10/089,984		BUMOL ET AL.	
	Examiner		Art Unit	
	J. Jason Galvez		1647	

- The MAILING DATE of this communication appears on the cover sheet with the correspondence address -  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b)

**Status**

- 1) ☒ Responsive to communication(s) filed on 05/01/2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-12 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date: _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date: _____  | 6) <input type="checkbox"/> Other: _____                                    |

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## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction is required under 35 U.S.C. 121 and 372. This application contains the following inventions or groups of inventions that are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-3 and 8-12, drawn to method of treating selected lung diseases and inhibition of T cell activation.

Group II, claim(s) 4-7, drawn to method of manufacturing a pharmaceutical.

The inventions listed in Groups I and II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT 13.2, they lack the same or corresponding special technical feature for the following reasons:

In accordance with PCT Rule 13.2, unity of invention exists only when there is a shared same or corresponding special technical feature among the claimed inventions.

All the groupings are directed to methods of utilizing FLINT polypeptides, however each group has a different apparent special technical feature not shared by the remaining groups. Group I has the apparent special technical feature of a method of utilizing

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FLINT polypeptides in treating selected lung diseases and inhibition of T cell activation, while Group II has the apparent special technical feature of a method of utilizing FLINT polypeptides in the manufacture of a pharmaceutical. The special technical feature of Group I and II are distinct because they claim different starting material, different methodologies, different objectives, and different outcome measures. Thus, the inventions are not so linked as to form a single general inventive concept under PCT Rule 13.1.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement may be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

### Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **J. Jason Galvez, Ph.D.** whose telephone number is **571-272-2935**. The examiner can normally be reached Monday through Friday 9 AM to

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5 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Brenda Brumback, Ph.D.** can be reached at **571-272-0887**.

The fax phone number for the organization where this application or proceeding is assigned is **703-872-9306**. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at **866-217-9197** (toll-free).

JJG  
07/30/04

Please type a plus sign (+) inside this box → ☐

PTO/SB/17 (12/97)

Approved for use through 09/30/00. OMB 0651-0032  
Patent and Trademark Office: U.S. DEPARTMENT OF COMMERCE

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FEE TRANSMITTAL				Complete if Known																																																																																																																																																																																																																																																																																																																
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116	430	216	215	Extension for reply within second month																																																																																																																																																																																																																																																																																																																
117	980	217	490	Extension for reply within third month	980.00																																																																																																																																																																																																																																																																																																															
118	1,530	218	765	Extension for reply within fourth month																																																																																																																																																																																																																																																																																																																
128	2,080	228	1,040	Extension for reply within fifth month																																																																																																																																																																																																																																																																																																																
119	340	219	170	Notice of Appeal																																																																																																																																																																																																																																																																																																																
120	340	220	170	Filing a brief in support of an appeal																																																																																																																																																																																																																																																																																																																
121	300	221	150	Request for oral hearing																																																																																																																																																																																																																																																																																																																
138	1,510	138	1,510	Petition to institute a public use proceeding																																																																																																																																																																																																																																																																																																																
140	110	240	55	Petition to revive-unavoidable																																																																																																																																																																																																																																																																																																																
141	1,370	241	685	Petition to revive-unintentional																																																																																																																																																																																																																																																																																																																
142	1,370	242	685	Utility issue fee (or reissue)																																																																																																																																																																																																																																																																																																																
143	490	243	245	Design Issue Fee																																																																																																																																																																																																																																																																																																																
144	660	244	330	Plant Issue Fee																																																																																																																																																																																																																																																																																																																
122	130	122	130	Petitions to the Commissioner																																																																																																																																																																																																																																																																																																																
123	50	123	50	Petitions related to provisional applications																																																																																																																																																																																																																																																																																																																
126	180	126	180	Submission of Information Disclosure Sheet																																																																																																																																																																																																																																																																																																																
581	40	581	40	Recording each patent assignment per property (times number of properties)																																																																																																																																																																																																																																																																																																																
146	790	246	395	Filing a submission after final rejection (37 CFR 1.129(a))																																																																																																																																																																																																																																																																																																																
149	790	249	395	For each additional invention to be examined (37 CFR 1.129(b))																																																																																																																																																																																																																																																																																																																
179	790	279	395	Request for Continued Examination (RCE)																																																																																																																																																																																																																																																																																																																
169	900	169	900	Request for expedited examination of a design application																																																																																																																																																																																																																																																																																																																
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<b>2. CLAIMS</b> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th>Total Claims</th> <th>Extr *</th> <th>Fee from below</th> <th>Fee Paid</th> </tr> </thead> <tbody> <tr><td>20***</td><td>X</td><td>18</td><td></td></tr> <tr><td>3***</td><td>X</td><td>88</td><td></td></tr> <tr><td>Multiple Dependent Claims (first time)</td><td>X</td><td>300</td><td></td></tr> </tbody> </table> <table border="1" style="width:100%; border-collapse: collapse;"> <thead> <tr> <th>Large Fee Code</th> <th>Entity Fee (\$)</th> <th>Small Fee Code</th> <th>Entity Fee (\$)</th> <th>Fee Description</th> </tr> </thead> <tbody> <tr><td>103</td><td>18</td><td>203</td><td>9</td><td>Claims in excess of 20</td></tr> <tr><td>102</td><td>88</td><td>202</td><td>44</td><td>Independent claims in excess of 3</td></tr> <tr><td>104</td><td>300</td><td>204</td><td>150</td><td>Multiple dependent claim</td></tr> <tr><td>109</td><td>88</td><td>209</td><td>44</td><td>Reissue independent claims over original patent</td></tr> <tr><td>110</td><td>18</td><td>210</td><td>9</td><td>Reissue claims in excess of 20 and over original patent</td></tr> </tbody> </table> <b>SUBTOTAL (2)</b> (\$0.00)				Total Claims	Extr *	Fee from below	Fee Paid	20***	X	18		3***	X	88		Multiple Dependent Claims (first time)	X	300		Large Fee Code	Entity Fee (\$)	Small Fee Code	Entity Fee (\$)	Fee Description	103	18	203	9	Claims in excess of 20	102	88	202	44	Independent claims in excess of 3	104	300	204	150	Multiple dependent claim	109	88	209	44	Reissue independent claims over original patent	110	18	210	9	Reissue claims in excess of 20 and over original patent	<b>SUBMITTED BY</b> <table border="1" style="width:100%; border-collapse: collapse;"> <tr> <td><b>Typed or Printed Name</b></td> <td>Thomas D. Webster</td> <td><b>Complete (if applicable)</b></td> <td></td> </tr> <tr> <td><b>Signature</b></td> <td><i>Thomas D. Webster</i></td> <td><b>Reg. Number</b></td> <td>39,872</td> </tr> <tr> <td></td> <td></td> <td><b>Date</b></td> <td>11/5/04</td> </tr> </table>				<b>Typed or Printed Name</b>	Thomas D. Webster	<b>Complete (if applicable)</b>		<b>Signature</b>	<i>Thomas D. Webster</i>	<b>Reg. Number</b>	39,872			<b>Date</b>	11/5/04																																																																																																																																																																																																																																																			
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